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THE ATTITUDE OF THE UNITED STATES TOWARD ARBITRATION AND THE WORLD COURT.

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Thesis

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I HISTORY OF PROJECTS RELATING TO ARBITRATION

1. Congress Of Westphalia

The Congress of Westphalia of 1648 recognized the independence of states irrespective of origin, size, or religion, thus making possible both the society and the law of nations.

The most important projects of the seventeenth century in relation to a World Court were those of Emeric Crucé (1623), of Grotius (1625), of Sully (1638), and of William Penn (1693); and of the eighteenth century, those of the Abbé de Saint-Pierre, of Jean Jacques Rousseau, of Jeremy Bentham (1786-89), and of Kant (1795). In the nineteenth century Ladd (1840).

2. Crucé's Project.

Crucé's desire was to secure the establishment of universal peace, and for this purpose he advocated "before resorting to arms, resort to the arbitration of the sovereign potentates and lords," in an assembly composed of ambassadors, in a city chosen for this purpose where, all sovereigns should have perpetually their ambassadors, in order that the differences that might arise should be settled by the judgment of the whole assembly. The ambassadors of those who would be interested would plead their grievances and their masters and the other deputies would judge them without prejudice. And the better to authorize it, all the said princes will swear to hold as inviolable law what would be ordained by the majority of votes in the said assembly, and to pursue with arms those who would wish to oppose it.

3. Grotius Plan.

The plan of Grotius was not as with Crucé a union of states and a perpetual conference, but periodical conferences of independent and equal states, in which their disputes not otherwise settled were to be adjusted by diplomatic negotiations, such as happened in the Congress of Westphalia (1648) and in the Congress of Vienna (1814-15).

4. Sully Plan.

The Great Design as sketched by Sully, contemplated the formation of a Christian republic, to be composed of fifteen states, with a general council or senate of approximately seventy persons representing the states of Europe, to deliberate on affairs as they arose, to occupy themselves with discussing different interests, to pacify quarrels, to throw light upon and oversee the civil, political, and religious affairs of Europe, whether internal or foreign, whose decisions should have the force of irrevocable and unchangeable decrees, as being considered to emanate from the united authority of all the sovereigns, pronouncing as freely as absolutely.

The Great Design proposed to humble the pride and power of Austria by force, and the federation of Europe, produced by force, was to be maintained by the sword. The united efforts of the confederation was to have a single object; namely, to expel the Turk from Europe.

5. Penn's Project for Peace of Europe.

Penn's project was to establish a European diet, parlia-

ment,or estates, moved thereto, as he says, by the project of Henry IV. The sovereign princes of Europe were to be represented in the diet, according to their revenues, not upon the plane of equality. The diet was to meet yearly or every second or third year. Before this sovereign assembly, should be brought all differences depending between one sovereign and another, that can not be made up by private embassies, before the session begins. If any of the Sovereignties refuse to abide by the decision of the assembly or seek to remedy their troubles by use of arms, all the other Sovereignties were to unite as one strength and compel submission and performance of the sentence, with damages to the suffering party, and charges to the Sovereignties that obligated their submission.

The project seems to contain within it the germs of a league to enforce peace and of an international police which would make it objectionable to those who believe in public opinion as a sanction of law, whereas the provision for the use of force will commend it to those who believe in force as the sanction of law.

6. Abbé de Saint Pierre Project.

Abbé de Saint-Pierre's project was entitled "Memoirs to Render Peace Perpetual in Europe". His plan was to procure, by force if necessary, the acceptance of the status created by the Treaty of Westphalia of 1648 and of Utrecht of 1713-14 in the conclusion of which he was interested as secretary to the French pleniopentiary. He contemplated a union, if possible, of all Christian sovereigns, with a perpetual congress or

senate in which the sovereigns should be represented by deputies. The union was, in the first instance, to be voluntary, but after enough states had joined it to make fourteen votes, a sovereign refusing to enter was to be declared an enemy to the repose of Europe, and force was to be used against him until he adhered to it or until he was entirely despoiled of his territories. The organ of the union, called the Senate, was to consist of some four and twenty members, and before this body complaints of the sovereign members of the union were to be laid. The dispute was to be decided by the senate provisionally by a majority, finally by three-fourths of the members, and the failure of a sovereign or members of the union to accept the decision required the European society or union to declare war against the recalcitrant member and to continue it until he was disarmed, the judgment executed, the costs of the war paid by him, and the country conquered from him forever separated from his dominions.

7. ROUSSEAU'S PROJECT.

Rousseau's project was;--That the contracting sovereigns shall establish a perpetual and irrevocable alliance, and shall name their plenipotentiaries in a diet or permanent congress in which all differences of the contracting parties shall be adjusted by arbitration or by judicial decisions (Article 1); that the number of sovereigns shall be specified whose plenipotentiaries shall have the right to vote in the diet, those who shall be invited to accede to the treaty, the order, the time and the manner by which the presidency shall pass from one to another for an equal period, and finally the quota of contributions of money and the manner of assessing them to meet the common expenses (Article 2); that the confederation shall guarantee to each of its members the possession and government of their

territories according to actual possessions and the treaties then in effect, that disputes arising between them should be settled by the diet, and that the members of the diet should renounce the right to settle their disputes by force and also renounce the right to make war on one another (Article 3); that the members violating the fundamental treaty should be placed under the ban of Europe and prescribed as a common enemy, that is to say, if it refuses to execute the judgments of the diet, if it makes preparations for war, if it takes up arms to resist or to attack any of the allies, it should be proceeded against by the allies and reduced to obedience (Article 4); that the provisional decisions of the diet should be by a majority, the final decisions requiring a majority of three-fourths of the members of the diet acting under instructions from their governments, that the diet could legislate for the well-being of Europe, but could not change any of the provisions of the fundamental articles without the unanimous consent of the contracting powers (Article 5).

In essence Rousseau's plan is that of Saint-Pierre remodelled to satisfy Rousseau.

8. Bentham's Project.

Bentham's "Plan for an Universal and Perpetual Peace", was probably written in 1786 and 1789 but not published until 1839.

His plan was to limit the number of troops to be maintained by nations that composed Europe, and, the emancipation of the distant dependencies of each state, To do this he advocated the establishment of a common court of judicature for the decision of differences between the several nations, and

that the court was not to be armed with any coercive powers. He said, "establish a common tribunal" "the necessity for war no longer follows from difference of opinion. Just or unjust, the decision of the arbiters will save the credit, the honor of the contending party."

The powers of the congress would be, "(1) In reporting its opinion; (2) In causing that opinion to be circulated in the dominions of each state; (3) After a certain time, in putting the refractory state under the ban of Europe."

9. Kant's Project.

Kant considered that to secure perpetual peace the civil constitution of every state must be republican and that all international right must be grounded upon a federation of free states. Kant does not suggest the establishment of an international court to administer the law which the practice and custom of nations has made, or which has been agreed to in the Congress of Nations.

10. Ladd's Project.

William Ladd had a plan for a Congress of Nations for the adjustment of international disputes without resort to arms. In his plan he accepted nations as actually constituted, proposed a Congress of such nations, in which each would be represented with an equal vote, and the establishment of a court of justice for the settlement of disputes between them. His plan consisted of two parts: 1st. A congress of ambassadors from all those Christian and civilized nations who should choose to send them, for the purpose of settling the principles of international law by compact and agreement, of the nature of a mutual treaty, and also of devising and promoting plans for the preservation of peace,

and meliorating the conditions of man.

2nd. A court of nations, composed of the most able civilians in the world, to arbitrate or judge such cases as should be brought before it, by the mutual consent of two or more contending nations.

Ladd's plan divides entirely the diplomatic from the judicial functions, which require such different, not to say opposite, characters in the exercise of their functions. He considered the Congress as the legislature, and the Court as the judiciary, in the government of nations, leaving the function of the executive with public opinion.

II Mediation And Arbitration Defined.

1. Mediation.

Mediation is the offer of the good offices of a third state to carry on negotiations in an advisory capacity and recommend a possible solution of an international dispute that could not be settled by the diplomats of two other states, between which the dispute arose. It is a diplomatic function.

2. Arbitration.

Arbitration is the application of law and judicial methods in settling international differences between states, by judges of their own choice who decide on the basis of respect for stipulated law covering the differences. It is a judicial and political function which displaces war between nations as a means of obtaining redress. The Jay Treaty is a very good illustration of what is meant by arbitration.

III The Jay Treaty

1. For Arbitration Of International Difficulties.

The first real step toward the settlement of difficulties of international importance without resorting to war, in so far as the United States was concerned, was the Jay Treaty between the United States and Great Britain. It would settle such difficulties by arbitration.

2. Appointment of Jay.

On April 16, 1794, Washington sent to the Senate the nomination of John Jay, then Chief Justice of the United States, as envoy extroadinary to Great Britain. Washington, in explanation of his action, referred to the serious aspect of affairs and expressed his opinion that peace ought to be pursued with unremitted zeal before resorting to war. Jay's nomination was confirmed by a vote of 18 to 8. His instructions, which were signed by Edmund Randolph, were dated May 6, 1794.

3. Treaty Signed.

Jay made his first formal representation to Earl Grenville July 30, 1794, and on the 6th of August submitted a series of articles. Various projects were exchanged and on the 19th of November a treaty was signed.

4. Jay's Instructions.

Jay's instructions laid down only two immutable conditions: (a) no deviation from our treaties or engagements with France; (b) no treaty of commerce without an entrance of American ships of at least limited tonnage into the British West Indies. Hamilton's letters to Jay had outlined the terms which in the last resort might be accepted: evacuation of American territory, indemnification for spoliations not justifiable by the Order of June 8, 1793 or

the Rule of 1756; if necessary the acceptance, for a limited period of the existing commercial relations, without a treaty of commerce.

5. Features of Jay Treaty.

It recognized the right of the United States, which had been inserted in the treaties concluded under the old form of government, to authorize aliens to hold and dispose of real estate in the several States. It aimed to establish, as far as the British monopoly of that day would permit, reciprocity in trade on the American continent; and it declared by reciprocity it was intended to render in a great degreee the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood. It made reciprocal provisions for the equalization of import and export duties. It provided a mode for settling by arbitration, differences which had arisen between the two powers, and it also declared that it was unjust and impolitic that debts and engagements contracted and made by individuals, having coffidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences; and it, therefore, provided that there should be no confiscation or sequestration of debts, in event of war between parties. By it the parties agreed that an innocent neutral vessel, approaching a blockaded port, without knowledge of the blockade, should be warned and turned away without detention and without confiscation of the vessel, or of the cargo, unless contraband. It required each party to bring to the notice of the other of any causes or complaint it might have before proceeding to the extremities of reprisals or of war; and it made provisions, to a limited extent, for the extradition of persons charged with the commission of crimes.

6. First Step of United States Toward World Court.

The first sign of the coöperation of the United States, as a nation, in developing the idea of a world court can be detected in the Jay Treaty between United States and Great Britain wherein said treaty provided for a mode for settling by arbitration, differences which had arisen between the two powers. Again one finds an inkling of the same strain wherein the treaty provides that; each party to bring to the notice of the other of any cause or complaint it might have before proceeding to the extremities of reprisals or of war. These two conditions show beyond the least reason of doubt that something besides a treaty, between an Infant Nation and a Mother Nation, made such conditions binding. The other nations of the world, due to customs established between nations, must have added strength to the carrying out of such a treaty.

IV "ALABAMA CLAIMS".

Another important part played by the United States in settling disputes by arbitration rather than by war was the Alabama Claims case with Great Britain.

1. Treaty of Washington, 1871.

Articles I to XI, in the treaty of Washington made provisions for the settlement by arbitration of the injuries alleged to have been suffered by the United States in consequence of the fitting out, arming, or equipping, in the ports of Great Britain of the Alabama and other Confederate cruisers that made war on the United States. The Arbitrators, who met

at Geneva on December 15, 1871, consisted of Mr. Charles Francis Adams for the United States; Sir Alexander Cockburn for Great Britain; the King of Italy named Count Frederic Sclopis; the President of the Swiss Confederation, Mr. Jacob Staempfli;and the Emperor of Brazil, the Baron d' Itajnbá.

Mr. J. C. Bancroft Davis was appointed agent of the United States, and Lord Tenterden of Great Britain.

In effect, the United States were the plaintiffs and Great Britain the defendant, in a suit at law, to be tried, it is true, before a special tribunal, and determined by conventional rules, but not the less a suit at law for the recovery of damages in reparation of alleged injuries.

2. Court of Arbitration.

Intelligent people, on reading the American case, awoke to the fact that Great Britain was about to be tried before a high court constituted by three neutral governments.

What all Europe dreaded was a rupture between Great Britain and the United States, that would disturb the money market of Europe, and impede the payment by France of the indemnity due to Germany. And all men saw that the United States must and would resent the refusal by Great Britain to observe the stipulations of the Treaty of Washington.

3. Decision In Favor of United States.

When the decision of the Arbitration Tribunal was rendered on September 14, 1872 in favor of the United States it would be impossible that any one of the persons present on that occasion should ever lose the impression of the moral grandeur of the scene, where the actual rendition of arbitral

judgment on the claims of the United States against Great Britain bore witness to the generous magnanimity of two of the greatest nations of the world in resorting to peaceful reason as the arbiter of grave national differences, in the place of indulging in baneful resentments of the vulgar ambition of war.

4. Direct Judgment on National Losses.

The direct judgment as between the United States and Great Britain is to prevent either Government, when a Belligerent, from claiming of the others, when a Neutral, an award or compensation or computation of damages for any losses or additional charges or general expenses of war, which such Belligerent, in its political capacity as a nation, may suffer by reason of the want of due diligence for the prevention of violation of neutrality in the ports of such Neutral. That is to say, the parties to the Treaty of Washington are stopped from claiming compensation, one of the other, on account of the national injuries occasioned by any such breaches of neutrality, not because they are indirect losses,--for they are not,--but because they are national losses, losses of the State as such. As a result each state may, in controversies on the same point with other nations, allege the moral authority of the Tribunal of Geneva.

The arbitrators, who rendered such a direct judgment, rejected the claim against Great Britain in so far as the Alabama was concerned on the ground that injuries inflicted

on a Belligerent by the failure of a Neutral to exercise due diligence for the prevention of belligerent equipments in its ports, or the issue of hostile expeditions therefrom, are injuries done to the Belligerent in its political capacity as a nation, and resolve themselves into an element of national charges of war that should be sustained by the Belligerent. Therefore, this does not constitute a good foundation for an award of compensation or computation of damages between nations from the viewpoint of international law bearing on such cases.

The phrase due diligence caused such a controversy that the arbitrators interpreted it to mean the proportional risks to which either, as a belligerent, may be exposed by the failure to fulfill the obligations of neutrality by either.

When Great Britain allowed the Alabama to be built, armed, and equipped, under her very eyes, for action against the United States, she wilfully violated the code of honor between nations who were supposed to be at peace with each other. England, by permitting such conditions, violated an international law on neutrality that requires a neutral to use due diligence in preventing her territory being used as a base of operation by any belligerent of a nation with which she is at peace.

5. Decision: Private Claims

But while national losses incurred by the Belligerent, as a State, in consequence of such breach of neutrality are not to be made the subject of compensation or computation of damages, all private or individual losses may be under the qualification and limitation as to character and amount found by the Tribunal.

6. Award.

The Tribunal, awarded by a vote of four to one, the sums of fifteen million five hundred thousand dollars in gold as the indemnity to be paid by Great Britain to the United States for the satisfaction of all the claims referred to the consideration of the Tribunal.

The award is to the United States, in conformity with the letter of the Treaty, which has for its well-defined object to remove and adjust complaints and claims on the part of the United States.

7. Effect of the Award.

But the history of the Treaty and of the Arbitration shows that the United States recovered not for the benefit of the American Government as such, but for such individual citizens of the United States as appeared to have suffered loss by the acts of neglect of the British Government.

8. Gain of the United States by the Award.

The United States gained the vindication of our rights as a Government; the redress of the wrong that was done to our citizens; the political prestige, in Europe and America, of the enforcement of our rights against the most powerful State of Christendom; the elevation of maxims of right and of justice into the judgment-seat of the world; the recognition of our theory and policy of neutrality by Great Britain; the honorable conclusion of a long-standing controversy and the extinction of cause of war between Great Britain and the United States; and the moral authority of having accomplished these great ob-

jects without war, by peaceful means, by appeal to conscience and to reason, through the arbitrament of a high international Tribunal.

The attitude of the United States toward arbitration was not confined to the difficulties with one country. She was also interested in ironing out the difficulties of American countries by the same means and as a result of such interest invitations were sent to the other governments in North and South America to meet in a Congress for such a purpose.

V. First Congress of American Nations.

1. Foundation For The Congress.

The attitude of the United States toward the arbitration of difficulties between the states of both Americas may be traced from March 3, 1845, when Mr. Calhoun, Secretary of State, instructed Mr. Brent, M.S. Argentine Republic, to insist upon arbitration concerning a debt to a citizen of the United States. This was, in reality, the constructional process by which the foundation was built that later supported the First Congress of American nations.(1)

2. President Taylor's Attitude Toward South American States

Another step in the building of this foundation was the attitude of President Taylor in his message of December 4, 1849, which aided in a material way to promote good feelings between the Americas. He pointed out to the South American States that the United States would always be disposed to assist in the event of any difficulties between them and any European nation, providing such assistance would not entangle us in foreign wars or unneccessary controversies. (2)

(1) Moore's Digest Vol. 7, Page 27.
(2) Moore's Digest Vol. 7, Page 6.

The significance of this offer, which must have been accepted by South American States, can be best set forth by quoting the communication of Mr. Blaine (Sec. of State) to Mr. Morgan, M. S. Mexico, under the date of November 29, 1881.

3. Mr. Blaine (Sec. of State) To Mr. Morgan.

"For some years past a growing disposition has been manifested by certain States of Central and South America to refer disputes affecting grave questions of international relationship and boundaries to arbitration rather than to the sword. It has been, on several such occasions, a source of profound satisfaction to the Government of the United States to see that this country is, in a large measure, looked to by all the American powers as their friend and mediator. The just and impartial counsel of the President in such cases has never been withheld, and his efforts have been rewarded by prevention of sanguinary strife or angry contention between people whom we regard as brethren."(1) On the same day Mr. Blaine sent out invitations for the First Congress of American Nations.

4. First Congress of American Nations.

On November 29, 1881, Mr. Blaine, as secretary of state of the United States, extended, in the name of the President, an invitation to all the independent countries of North and South America to participate in a general congress to be held in Washington on the 24th of November, 1882, for the purpose of considering and discussing methods of preventing war between the nations of America. Due to trouble existing between South American Countries this congress did not convene until 1889-1890, although the President of United States gave his approval for the conference on May 28, 1888.

(1) Moore's Digest, Vol. 7, Page 7.

5. Results Of The Congress.

One of the results of the conference of this congress was the plan of arbitration adopted April 18, 1890. By this plan it was declared that arbitration, as a means of settling disputes between American republics, was adopted as a principle of American international law; that arbitration should be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation and the validity, construction and enforcement of treaties; and that it should be equally obligatory in all other cases, whatever might be their origin, nature or object, with the sole exception of those which, in the judgment of one of the nations involved in the controversy, might imperil its independence; but that even in this case, while arbitration for that nation should be optional, it should be obligatory upon the adversary power. The plan did not meet the approval of the governments whose representatives adopted it. The Conference also adopted a resolution recommending arbitration to the nations of Europe. It also failed to be ratified. The failure of this last item to be ratified by the states, whose representatives participated in its adoption, did not prevent the United States from expressing its attitude toward arbitration by means of President Cleveland's message of December 4, 1893.

6. President Cleveland's Annual Message of Dec. 4, 1893.

On April 18, 1890, the International American Conference of Washington by resolution expressed the wish that all controversies between the republics of America and the nations of Europe might be settled by arbitration, and recommended that the Government of each nation represented in that conference should communicate this wish

to all friendly powers.

Favorable responses of coöperation were received from Great Britain, France, Swiss Federal Council and Italy.

The results, of the action of President Cleveland, caused more nations, than at any previous time in history, to seek settlement of their international difficulties by means of arbitration.

VI SECOND CONGRESS OF AMERICAN NATIONS.

1. Arbitration Discussed.

The second international conference of American States was held at the city of Mexico from October 22, 1901, to January 31, 1902, at which the subject of arbitration was much discussed. The delegates of the United States advocated the signing of a protocol affirming the convention for the pacific settlement of international disputes, signed at the Hague, July 29, 1899, as the best practicable plan for securing unamity of action and beneficial results.

2. Adhesion To Hague Convention.

A plan was finally adopted in the nature of a compromise. A protocol looking to adhesion to the Hague Convention was signed by all the delegations except those of Chili and Ecuador, who are said, however, afterwards to have accepted it in open conference. By this protocol authority was conferred on the governments of the United States and Mexico, the only American signatories of The Hague convention, to negotiate with the other signatory powers for the adherence thereto of other American nations so requesting.

3. Compulsory Arbitration.

A project of a treaty of compulsory arbitration was also signed by the delegations of the Argentine Republic, Bolivia, Santo Domingo, Salvador, Guatemala, Mexico, Paraguay, Peru, Uruguay and Venezuela. (1)

VII UNITED STATES FOR ARBITRATION.

1. Notable Cases of United States For Arbitration.

In the last century the United States was a party to fifty-six cases in which the principle of arbitration had been actually employed. Among these the most notable ones are: 1794, with Great Britain, The St. Croix River Boundary; 1794, with Great Britain, Recovery of Debts; 1794, with Great Britain, Maritime Seizures and the Rights and Duties of Neutrals; 1795, with Spain, Maritime Captures; 1802, with Spain, Mutual Claims; 1814, with Great Britain, Questions of Territory; 1814, with Great Britain, North-Eastern Boundary Question; 1814, with Great Britain, Northern Boundary of the United States; 1818, with Great Britain, Obligation as to Slaves; 1822, with Great Britain, Amount of Imdemnity; 1839, with Mexico, Personal Indemnities; 1842, with Brazil, Maritime Capture; 1851, with Portugal, Duties of Neutrals; 1853, with Great Britain, Reciprocal Claims; 1854, with Great Britain, Reserved Fisheries Question; 1857, with New Granada, Personal Claims; 1858, with Chili, The "Macedonia" Case; 1859, with Paraguay, Commercial Claims; 1860, with Costa Rica, Pecuniary Claims; 1862, with Ecuador, Mutual Claims; 1862, with Peru, Maritime Captures; 1863, with Peru, Mutual Claims; 1865,

(1) Moore's Digest, Vol. 7, Page 95.

with Great Britain, Companies Claims; 1864, With Colombia, Panama Riot and other Claims; 1864, with Salvador, Government Monopoly; 1866, with Venezuela, Claims by citizens of the United States against the Government of Venezuela; 1868, with Mexico, Mutual Claims; 1868, with Peru, Mutual Claims; 1870, with Brazil, Loss of Ship; 1870, with Spain, Detention of Ship; 1871, with Spain, Results of Cuban Insurrection; 1871, with Great Britain, "Alabama" Claims; 1871, with Great Britain, Civil War Claims; 1871, with Great Britain, Fishery Rights; 1871, with Great Britain, San Juan Water Boundary; 1873, with Chili, Detention of Ship; 1874, with Colombia, Seizure and Detention of Ship; 1880, with France, Mutual Claims; 1884, with China, Ashmore Fishery Claim; 1884, with Hayti, Personal Claims; 1885, with Hayti, Civil Disturbances; 1885, with Spain, Maritime Capture; 1888, with Hayti, Arbitrary Arrest; 1888, with Morocco, Illegal Arrest; 1888, with Denmark, Seizure and Detention of Ships; 1890, in conjunction with Great Britain, with Portugal, Railway Concessions; 1892, with Venezuela, Seizure of Ships; 1892, with Great Britain, The Behring Sea Seal Fisheries; 1892, with Chili, Mutual Claims; 1893, with Ecuador, Alleged Illegal Arrest; 1896, with Great Britain, Fur Seal Settlement; 1897, with Mexico, Personal Injuries; 1897, with Siam, Military Assault; 1897, with Siam, Personal Injuries; 1898, with Peru, Personal Injuries; 1898, with Great Britain, Outstanding Questions; 1899, with Germany and Great Britain, Samoan Difficulties; 1899, with Hayti, Seizure and Sale of Goods; 1899, with Germany and Great Britain, Military Operations; 1900, Guatemala, Mutual Claims; 1900, Nicaragua, Alleged Illegal Seizure; 1900, with Russia, Seizure of Ships; 1902, with Mexico, The Pious Fund of the Californians; 1903, with San Domingo, Liquidation of Debt; 1903, with San Domingo,

Company Claims; 1903, with Great Britain. Alaskan Boundary; 1903, with Venezuela, Pecuniary Claims.

Another treaty that should be mentioned, although approved by Presidents Cleveland and McKinley but refused ratification by the Senate, was the one by Olney-Pauncefote between the United States and Great Britain.

2. Olney-Pauncefote Arbitration Treaty.

The Olney-Pauncefote treaty, if it was ratified by the Senate, would refer to arbitration all pecuniary claims by citizens of the United States against Great Britain, exceeding 100,000£, of one or more persons rising out of the same transactions or involving the same issues of law and of fact. The treaty met the approval of President Cleveland.

3. President Cleveland Approved The Treaty.

President Cleveland called the treaty an experiment of substituting civilized methods for brute force as the means of settling questions of right will. He pointed out the example set and the lesson furnished by the successful operation of this treaty that were sure to be felt by other nations. He also thought it would mark the beginning of a new epoch in civilization.(1) His brief message was about the only effort either he or Olney made to enlighten the public mind on the matter.

The treaty was signed at Washington, January 11, 1897, by Mr. Olney, Secretary of State, and Sir Julian Pauncefote, British Ambassador. (2) It was then sent to the Senate for ratification.

(1) Moore's Digest, Vol 7, Page 75.

(2) Moore's Digest, Vol. 7, Page 77.

4. Senate Did Not Consent.

On May 12, 1897, Mr. Sherman, (Sec. Of State) notified Sir Julian Pauncefote that the Senate of the United States, under date of May 5, 1897, failed to give its advice and consent to the ratification of the arbitration treaty concluded on January 11, 1897, between the United States of America and Great Britain.

Mr. Olney ascribed its defeat to three causes: 1. To the anti-Cleveland animous in Congress; 2. to Senator Lodge's policy to harass and coerce England into considering international bi-metallism; 3. and chiefly to the Senate's definite intention to encroach upon the prerogatives of the Executive.

This treaty was again presented to the Senate for ratification on December 6, 1897 by President McKinley, who expressed in his message what he termed the attitude of the United States on treaties of arbitration.

5. President McKinley's Opinion On The Treaty.

He stated that arbitration was the true method of settlement of international as well as local or individual differences. He pointed out that the treaty was the result of our own initiative and that it contained the foreign policy of our entire national history for the adjustment of difficulties by judicial methods rather than by force of arms. Although he urged its passage by the Senate, not as a matter of policy but as a duty to mankind, it again failed to be ratified by the Senate.

VIII THE FIRST HAGUE CONFERENCE, MAY 18, 1899.

1. Development Of International Law.

The development of international law since the call for the First Peace Conference at the Hague in 1898 has been greater than that during the 250 years preceding, from the peace of Westphalia in 1648 to the call for The Hague Conference in 1898.

2. Purpose of Conference.

The Conference was called by means of communications sent out by the Emperor of Russia, Nicholas II. It proposed to the Nations a Conference to be held at the Hague for the purpose of seeking, by means of international discussion, the most effective means of insuring to all peoples the benefits of a real and durable peace, and, above all, of putting an end to the progressive development of the present armaments, which strike at the public prosperity at its very source.

3. United States Represented.

Twenty six nations attended the first Conference among which were the United States and Mexico.

4. Instructions To Delegates from United States to First Hague Conference. (in full)

It is understood that all questions concerning the political relations of States and the order of things established by treaties, as in general all the questions which shall not be included directly in the program adopted by the cabinets, should be absolutely excluded from the deliberation of the Conference.

The first article relating to the non-augmentation and future

reduction of effective land and sea forces, is, at present, so inapplicable to the United States that it is deemed advisable for the delegates to leave the initiative upon this subject to the representatives of those Powers to which it may properly belong. In comparison with the effective forces, both military and naval, of other nations, those of the United States are at present so far below the normal quota that the question of limitation could not be profitably discussed,

The second, third, and fourth articles, relating to the non employment of firearms, explosives, and other destructive agents, the restricted use of existing instruments of destruction, and the prohibition of certain contrivances employed in naval warfare, seem lacking in practicability, and the discussion of these propositions would probably prove provocative of divergence rather than unanimity of view. It is doubtful if wars are to be diminished by rendering them less destructive, for it is the plain lesson of history that the periods of peace have been longer protracted as the cost and destructiveness of war have increased. The expediency of restraining the inventive genius of our people in the direction of devising means of defense is by no means clear, and considering the temptations to which men and nations may be exposed in a time of conflict, it is doubtful if an international agreement to this end would prove effective. The dissent of a single powerful nation might render it altogether nugatory. The delegates are,therefore, enjoined not to give the weight of their influence to the promotion of projects the realization of which is so uncertain.

The fifth, sixth, and seventh article, aiming in the interest

of humanity to succor those who by chance in battle have been rendered helpless, thus losing the character of effective combatants, or to alleviate their sufferings, or to ensure the safety of those whose mission is purely one of peace and beneficence, may well await the cordial interest of the delegates, and any practicable propositions based upon them should receive their earnest support.

The eighth article, which proposes the wider extension of good offices, mediation and arbitration, seems likely to open the most fruitful field for discussion and future action. "The prevention of armed conflicts by pacific means", to use the words of Count Mouravieff's circular of December 30, is a purpose well worthy of a great international convention and its realization in an age of general enlightenment should not be impossible. The duty of sovereign states to promote international justice by all wise and effective means is only secondary to the fundamental necessity of preserving their own existence. Next in importance to their independence is the great fact of their interdependence. Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent States, whose duty it is to prescribe the rules of Justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation.

The proposed conference promises to offer an opportunity thus far unequal in the history of the world for initiating a series

of negotiations that may lead to important practical results. The long continued and wide spread interest among the people of the United States in the establishment of an international court gives assurance that the proposal of a definite plan of procedure by this Government for the accomplishment of this end would express the desire and aspirations of this nation. The delegates are, therefore, enjoined to propose, at an opportune moment, the plan for an international tribunal, and to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose. It is believed that the dispositions and aims of the United States in relation to the other sovereign Powers could not be expressed more truly or opportunely than by an effort of the delegates of this Government to concentrate the attention of the world upon a definite plan for the promotion of international justice.

Since the Conference has its chief reason of existence in the heavy burdens and cruel waste of war, which nowhere affect innocent private persons more severly or unjustly than in the damage done to peaceable trade and commerce, especially at sea, the question of exempting private property from destruction or capture on the high seas would seem to be a timely one for consideration.

As the United States has for many years advocated the exemption of all private property not contraband of war from hostile treatment, you are authorized to propose to the Conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent Powers

which such property already enjoys on land as worthy of being incorporated in the permanent law of civilized nations.

5. Instructions To The American Delegates, April 18, 1899. (Summarized)

The proposed conference promises to offer an opportunity thus far unequaled in the history of the world for initiating a series of negotiations that may lead to important practical results. The long continued and widespread interest among the people of the United States in the establishment of an international court, as evidenced in the historical résumé attached to these instructions as Annex A, gives assurance that the proposal of a definite plan of procedure by this Government for the accomplishment of this end would express the desires and aspirations of this nation. The delegates are, therefore, enjoined to propose, at an opportune moment, the plan for an international tribunal, hereunto attached as Annex B, and to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose. It is believed that the disposition and aims of the United States in relation to the other sovereign powers could not be expressed more truly or opportunely than by an effort of the delegates of this Government to concentrate the attention of the world upon a definite plan for the promotion of international justice.

6. Results Of First Hague Conference.

The codification of the laws and customs of land warfare was one of the essential features of the First Hague Conference. Another feature worthy of note was the unanimous acceptance of the Red Cross Convention of Geneva of 1864, and ratified the same with some amendments as applied to naval warfare, all

tending directly in the interest of humanity. The fame of the Conference, therefore, must rest upon the work it accomplished. This work, conveyed to the world the united views of all the assembled Nations upon the wisdom and expediency of arbitration as a substitute for war, and the creation by it of the first international court to carry that principle into effective operation.

7. Report of American Delegates to the Hague Convention To The Secretary of State July 31, 1899. (Summarized).

As a consequence the convention prepared by the conference provides for voluntary arbitration only. It remains for public opinion to make this system effective. As questions arise threatening resort to arms it may well be hoped that public opinion in the nations concerned, seeing in this great international court a means of escape from the increasing horrors of war, will insist more and more that the questions at issue be referred to it. This will build up a body of international law growing out of the decisions handed down by the judges. The procedure of the tribunal requires that reasons for such decisions shall be given, and these decisions and reasons can hardly fail to form additions of especial value to international jurisprudence.

As to the revision of the decision by the tribunal in the case of the discovery of new facts, a subject on which our instructions were explicit, we were able to secure recognition in the code of procedure for the American view.

Our commission was careful to see that in this code there should be nothing which could put those conversant more especially

with British and American common law and equity at a disadvantage.

France wanted in the code to say: It provides a means through the agency of the powers generally, for calling the attention of any nations apparently drifting into war to the fact that the tribunal is ready to hear their contention. We endeavored to secure a clause limiting to suitable circumstances the duty imposed by the article. This was strongly opposed and then we decided to present a declaration that nothing contained in the convention should make it a duty of the United States to intrude or become entangled with European political questions or matters of internal administration or to relinquish the traditional attitude of our nation toward purely American questions. This declaration was received without objection by the conference in full and open session.

8. Organization Of Permanent Court of Arbitration.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a permanent Court of Arbitration, accessible at all times and operating unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

9. Members Of Hague General Board Are Not Officers Of The United States.

By Griggs at Gen. Nov. 7, 1900.

The members of the general board provided by the Hague

treaty are not officers of the United States whose appointments require confirmation by the Senate, nor are they in the ordinary acceptation of the terms persons holding offices. Their work is not only occasional, but is contingent upon their appointment by foreign powers to act as arbitrators in the settlement of disputes between them.

10. President McKinley's Message On The Hague Convention December 3, 1900.

It is with satisfaction that I am able to announce the formal notification at The Hague, on Sept. 4, of the deposit of ratifications of the convention for the pacific settlement of international disputes by sixteen powers.

The administrative council of the permanent court of arbitration has been organized and has adopted rules of order and a constitution for the International Arbitration Bureau.

11. President Roosevelt Puts Results Of First Hague Conference Into Operation.

In the very spirit, also, of the recommendations made by the Conference of 1899, was the action of President Roosevelt, in bringing together the Russian and Japanese Governments and inducing them to appoint representatives to discuss terms of peace, at what appeared to be the very height of their terrible warfare.

12. The American Doctrine of Arbitration.

The people and the Government of the United States had always been in favor of arbitration as a substitue for war, and had long advocated the establishment of such a tribunal, and the proposition for its creation by the Conference was therefore hailed by their representatives as their chief object in coming to the Conference.

13. Effect Of First Conference At The Hague.

Arbitrations and treaties of arbitration, almost without number, have occurred between different Nations who were parties to it, and there has been an almost universal concensus of opinion that arbitration should be resorted to before a resort to force is tried.

IX THE SECOND INTERNATIONAL AMERICAN CONFERENCE, 1901-1902.

1. On Arbitration.

In the Second International Conference of American States, which was held at the City of Mexico from October 22, 1901 to January 31, 1902, the subject of arbitration was much discussed. There appeared to be a unanimous sentiment in favor of arbitration as a principle, but a great contrariety of opinion as to the extent to which the principle should be carried.

2. United States Advocated Hague Convention.

The delegation of the United States advocated a protocol affirming the convention for the pacific settlement of international disputes, signed at The Hague, July 29, 1899 as the best practical plan for securing unanimity of action and beneficial results.

A plan was finally adopted in the nature of a compromise. A protocol looking to adhesion to The Hague convention was signed by all the delegates. By this protocol authority was conferred on the Governments of the United States and Mexico, the only American signatories of The Hague convention, to negotiate with the other signatory powers for the adherence thereto of other American nations so requesting.

3. Compulsory Arbitration.

A project of a treaty of compulsory arbitration was signed by the delegations of the Argentine Republic, Bolivia, Santo Domingo, Salvador, Guatemala, Mexico, Paraguay, Peru. Uruguay and Venezuela. (1)

4. Pecuniary Claims.

Besides the protocol and the project of treaty above mentioned, a project of treaty was adopted covering the arbitration of pecuniary claims. This project was signed by the delegations of all the countries then represented in the conference, viz.: Argentine Republic, Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Salvador, The United States and Uruguay.

By this project the signatories obligated themselves for a term of five years to submit to arbitration, preferably to the permanent court at The Hague, all claims for pecuniary loss or damage which might be presented by their respective citizens, and which could not be amicably adjusted through diplomatic channels, when such claims were of sufficient importance to warrant the expense of arbitration.

X THE SECOND HAGUE CONFERENCE.

In October, 1904, under the direction of President Roosevelt, John Hay, Secretary of State, addressed a circular note dated October 21, 1904, to all signatory Powers of 1899, suggesting the calling of the Second Conference at an early date.

(1) Moore's Digest, Vol. 7, Page 95.

1. All South American States At Second Hague Conference.

Through the sagacity and tact of Secretary Root, all the nations of Central and South America were included in the call for the Second Conference. The Second Conference consisted of delegates from forty-four independent nations.

2. Instructions To United States Delegates.

Secretary Root's instructions to United States delegates were;--In the discussion upon every question, it is important to remember that the object of the Conference is agreement, and not compulsion. If such conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the powers cannot be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the powers represented. Comparison of views and frank considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable.. It is not wise, however, to carry this to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future conference in the hope that intermediate consideration may dispose of the objections.

The immediate results of such a conference must always be limited to a small part of the field which the more sanguine

have hoped to see covered; but each successive conference will make the positions reached in the preceding conference its point of departure, and will bring to the consideration of further advance towards international agreement, opinions affected by the acceptance and application of the previous agreements. Each conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible.

"You should keep always in mind" he further says, the promotion of this continuous process through which progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in future conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reached no definite agreement. In addition the delegates were given instructions on future conferences.

3. Instructions On Future Conferences.

Secretary Root instructed the American delegates to the Second Conference to favor the adoption of a resolution by the Conference providing for the holding of further conferences within fixed periods, and arranging the machinery by which such conferences may be called and the terms of the programme may be arranged, without awaiting any new and specific initiative on the part of the

Powers or any one of them. Mr. Choate was instrumental in causing the date set for the next Conference to be in the year of 1915.

The second conference was in reality initiated by President Roosevelt.

4. Purpose Of Conference; Monsieur Leon Bourgeois.

The purpose of The Hague conference was according to Monsieur Leon Bourgeois, the Juridical organization of international life, the formation of a society of law among nations.

5. Mr. Joseph H. Choate On Conference.

The international conference was,as Mr. Choate clearly stated, a diplomatic, not a parliamentary body, and he explained the difference by the fact that unanimity was required in the proceedings of the one, whereas, a majority sufficed in the other. He also showed that the conference as such did not bind the nations by its action, but left the convention and other agreements adopted by it to be approved by each of the nations in accordance with its constitution, and that the individual nation was only bound by such subsequent approval. This would appear to be necessarily the case in an assembly of equals; for if the states be legally equal, no state can or should coerce another. The conference, therefore, proposed projects to the nations; it did not, as in the case of parliaments, impose them. The conference has come to be considered the organ of society of nations for the development of international law.

Mr. Choate worked very energetically to create two international courts by which international law principles could be interpreted and applied.

6. International Court Of Prize, And The Court Of Arbitral Justice.

Mr. Choate devoted his energies to the successful creation of two such tribunals, the International Court of Prize and the Court of Arbitral Justice.

Acting under the instructions of Secretary Root, Mr. Choate proposed a general treaty of arbitration which pledged the nations to submit to arbitrations differences of a legal nature and especially disputes concerning the interpretation or application of international treaties, or conventions, reserving from the obligation to arbitrate, disputes, which although of a legal nature, involved the independence, vital interests, and honor of the contracting parties.

Although Mr. Choate was very active for the interests of this country, the United States had another delegate whose ability and interest was equally as great in the personage of General Horace Porter.

7. General Horace Porter's Part.

General Horace Porter, a delegate from the United States, was responsible for a measure by which the nations bound themselves, each to the other and to all the world, not to resort to force for the collection of contract debts due from one nation to the citizens of another nation, without first exhausting the resources of arbitration. This guarantees protection of every nation, great or small, but particularly of the smaller nations who are more often in the predicament of inability to respond promptly to their obligations to the citizens of other nations for money loaned or advanced. It was the first case on record, of compulsory arbitration, agreed to by all nations except five, who abstained from voting.

There were other projects in which the United States was interested one of which was the international court of appeal in prize causes.

8. International Court Of Appeal In Prize Causes Established.

One of the most important projects was the establishment of an International Court of Appeal in Prize Causes. This was a great measure which received the assent of the delegates of thirty-seven nations. Six nations abstained from voting and only one nation, Brazil, voted against it.

A question arose on this matter with our own government as to the expediency, if not as to the constitutionality, of allowing an appeal to any foreign or international tribunal from any decision of the Supreme Court of the United States. This question Mr. Knox very wisely met and adjusted by ratifying with the reservation that the action of the International Prize Court, instead of taking the form of a direct appeal from the Supreme Court of the United States, should be limited to the determination of a claim for damages for the owner of the injured property against the United States or the captor.

9. Further Instructions To United States Delegates.

The United States instructed its delegates to the Second Peace Conference to propose a permanent tribunal composed of judges, who would devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility, and that the judges of the proposed tribunal should be so selected from the different countries that the different systems of law and procedure and the principal

languages should be fairly represented. As a result of these instructions the delegates proposed a court of arbitral justice.

10. Court Of Arbitral Justice Created.

The Court of Arbitral Justice which was proposed by the United States of America was adopted. Its purpose was to facilitate arbitration, and for that purpose to create a permanent universal court of justice composed in a definite manner, which should meet each year at The Hague, in order to decide, free of cost, all controversies submitted to it by the contracting powers. Although adopted it was not put into effect due to difficulty when the Conference desired to elect a restricted number of judges from among international jurists of greatest repute without considering the question of nationality. This condition caused both large and small nations to fear that they would not be justly represented.

XI THE LEAGUE OF NATIONS.

1. The Old Way Of Control Through Primacy Of Power.

Heretofore, the victory won, treaties of victorious allies laid new plans. Then observance of these was forced upon the weaker nations. This power born in force and preserved by force was always sooner or later opposed by new forces.

2. Peace Treaty Of Paris.

After the World War the nations deemed it advisable to establish means for abolishing the method of causing peace to be maintained by primacy of power. They sought means that they

considered would lead to lasting peace. The following nations: Great Britain, Belgium, France, and The United States held a conference at Paris for the purpose of forming an organization that would guarantee peace. Woodrow Wilson, President of the United States, was present at this conference and set forth a plan which he believed would lead to lasting peace.

3. President Wilson Peace Plan.

The initiative in devising a way to prevent future wars was taken by President Wilson of the United States. He formulated the so-called "fourteen points" on the basis of which peace, to be permanent, should be made. These fourteen points were advanced by President Wilson at the Peace Conference at Paris in the year of 1919. As a result of the Peace Conference a Constitution for a League of Nations was proposed by the Commission of which President Wilson was the chairman. The text of the Constitution presented to the Conference was the unanimous report from the representatives of fourteen nations. They were: The United States, Great Britain, France, Italy, Japan, Belgium, Brazil, China, Czechoslovakia, Greece, Poland, Portugal, Roumania, and Serbia. President Wilson, as chairman of the Peace Conference, said the League can be used for coöperation in any international matter.

At this conference which really was instrumental in forming the League of Nations, the Fourteen Points of President Wilson were discussed. The point which eventually led to the formation of the League of Nations and finally to the formation of the World Court was; A general association of nations must be formed for affording mutual guaranties of political independence and territo-

rial integrity to great and small nations alike. President Wilson issued the call for the first meeting of the League of Nations. The League of Nations met and formulated its own constitution. Article X, of the constitution, although approved by President Wilson was objected to by the Senate of the United States.

4. Article X.

Although article X was a part that the United States contributed toward the formation of the League, it was the same article that kept the United States out of the League. The Senate of the United States objected to the following: "The high contracting parties undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case any danger or threat of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled." (1)

5. Senate's Objection.

The main reason why the Senate of the United States objected to the foregoing article was; the acceptance of the particular article would imply transfer of the delegated power of the Senate to the League of Nations. The Constitution of the United States places the Senate as a check on the power of the President when treaties are concerned. No President can delegate the power of the Senate to any other organization. The objections on the part of the Senate prevents the United States from being a member of the League of Nations.

(1) Constitution of League of Nations; Art. X.

6. Why Are We Not In The League

The Senate decided that we should enter, if at all, only upon conditions called"reservations". President Wilson who was then in office, thought it wiser, either that we should go in unconditionally or stay out altogether. So we stayed out, due to the Senate refusing to ratify the Treaty of Versailles including the Covenant.

7. American Coöperation With The League.

The United States by being a non-member of the League has done more to stabilize the League's affairs than if she was a member. While there are no United States representatives in the Assembly or in the Council, we have officially participated during recent years in seven major conferences and committee meetings of the League of Nations, our representatives taking an active part, while unofficial representation is recorded for fourteen other pieces of work.

XII. THE UNITED STATES ATTITUDE TOWARD INTERNATIONAL LAW AND ITS APPLICATION.

1. What is International Law.

The foundation of law, is custom, or usage. A great deal of international law arose, as did the common law, from custom, without enactment. International law does not consist of law above the nations, imposed upon them by a superior power, it consists of rules and agreements among nations. A large part of international law, though it developed from custom, has since been specifically agreed to by most nations, and accordingly now rests, to that degree, on consent. Many of the most important

rules of international law have been expressed in conventions or treaties, which have been ratified by many nations. International law is at one and the same time both national and international; national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among members of the society of nations involving its principles. The test of whether a law is a controlling force is not how it arose; the test is whether it is obeyed. International law, in general, is obeyed, by the nations that wish to be considered as members of the civilized world. In the World War several rules that had been regarded as component parts of international law had not been universally accepted, and so were not binding. The two following interpretations will give one an idea of the early meaning of international law.

2. Francisco de Vitoria's Interpretation.

A Spaniard, Francisco de Vitoria (1480-1546) was the first one to define international law. He said, The law of nations was the law which natural reason had established among all nations. Therefore, the law of nations was that existing between States, which States were obliged to obey, and the rights under this law may be enforced by an appeal to arms if necessary by States against States. In war everything is lawful which the defense of the common weal requires. It is not lawful within a State to punish the innocent for the wrongdoing of the guilty. Therefore this is not lawful among enemies.

3. Franciso Suarez' Interpretation.

Franciso Suarez (1548-1617) said that the law natural was for human beings and the law of association was for States. International was in its early stage customary or unwritten law and was the law not of nations but between nations and as such it would be a law of general consent that could not be changed without general consent. International law is not a law of necessity but is dependent upon the consent of the nations, to what they consider to be just or advisable in view of the changed conditions in a changing world. Made by many or all, its benefits might be renounced by one; but no nation could be deprived of its rights under the law of nations; for made by many or all, it could only be changed by the many or all.

After reading all of the previous material one should be interested to know what is interpreted as international law by the United States.

4. United States On International Law.

The Department of State of the United States has acknowledged many times that international law is a part of the law of this country, and it has been so interpreted and applied by the United States Supreme Court. The courts of several states in the United States have declared that international law is a part of the common law of their states, and have punished breaches of international law accordingly. It has ever been the position of the United States that international law is a body of rules common to all civilized nations, equally binding upon all and impartially governing their mutual intercourse.

5. Arbitration Treaties And International Law.

Arbitration treaties between the United States and other states do not constitute international law in its general sense, as each one is only an agreement between the United States and the nation which is the other party to it. Along these lines may be cited the treaties of arbitration that Root negotiated, while he was Secretary of State in 1908, with twenty-two countries. Such being the fact concerning arbitration treaties, it would be interesting to note what laws are applied by the World Court of International Justice.

6. The Law The World Court Applies.

The World Court applies, as the basis of its decisions, the general principles of international law, and the international customs by which the civilized nations are already bound, using existing decisions and the treaties of the most eminent writers on international law in deciding what these general principles are; and it applies an international convention expressing rules which both of the contesting states have expressly recognized; or, if both of parties agree, it may decide a case on general equitable grounds. (1)

7. The United States Present Tendencies In International Relations.

The most widespread and significant tendencies in international relations today is the disposition in many governments to consider methods for satisfying the determination of their citizens or subjects for a reduction in armaments. The results of the Washington Conference for limitation of naval armament were so evaded by inter-

(1) World Peace Foundation Pamphlets 1928. Pages 105-106.

pretations that in the year 1929 the Government of the United States ordered the building of fifteen fast cruisers. The reason for such action was that several of the World States were developing their navies to such a degree, that our government recognized that it should do likewise. It did this as a method of protecting its interests throughout the world.

8. Elihu Root On Codification Of International Law.

Codification, so-called, of international law has a special importance at this time, because it is necessary in order to enlarge the service rendered by the Permanent Court of International Justice as one of a group of related institutions which, taken together, promise to facilitate the preservation of peace to a degree never before attained. There are three such institutions.

We can all agree upon the principles of international law, but it has been exceedingly difficult to secure agreement upon rules which will adequately and properly apply these principles. To authorize a court not merely to apply the rules of international law but to make those rules and then apply them, would be to authorize the court to overrule the nations themselves in their contention as to what the law ought to be, to establish rules to which the nations have not consented, and thus to deprive international law of one of its essential characteristics as a body of accepted rules.

International cases would have to be studied in order to properly codify international laws.

9. International Cases Form Basis For International Law.

The three neutrality rules of the treaty of Washington of 1871 were an attempt to determine by convention what should be the law to guide the tribunal in the Geneva arbitration upon the Alabama Case. The Geneva Conventions, The Hague Conventions, contain numerous provisions established between the parties by conventional agreement in reliance upon general acceptance to give them the quality of law as distinct from mere agreement. To that conventional method we must now look for the extension of international law.

In September 1924 the League of Nations adopted a resolution providing for the appointment of a committee of jurists for a progressive codification of international law. Elihu Root was one of the jurists chosen.

As the international cases of the United States formed a good basis for international law so did the Supreme Court of the United States form a good basis from which the World Court of International Justice was modelled. As far back as the days of John Marshall, the United States Supreme Court accepted the version, that international law was also the law of the United States.

10. The United States Supreme Court The Model For The World Court.

The court of the States created by the representatives of the States in the Federal Convention, declared the judicial power of the United States to extend to controversies between the States. From that time on, any question which could be submitted as judicial in the sense that it was within the jurisdiction thereof, might be accepted by the Supreme Court; and the settlement of con-

troversies by rule of law, became the practice of the States considering themselves after, as before, foreign in all matters except those in which they were united by the Constitution of the United States. The experience of the United States in the settlement of controversies between States by due process of law has at last made its way in the world at large, to such a degree that in 1920 the plan for a Permanent Court of International Justice was drafted, and through the action of the Assembly and Council of the League of Nations, the court is installed at The Hague, where it meets every year to administer justice between nations upon the principles of international law found by the judges to be relevant and applicable to the disputes submitted. The present Permanent Court of International Justice is modeled after the Supreme Court of the United States. Before each member of the Advisory Committee of Jurists which drafted it, lay a copy of Madison's Debates in Federal Convention.

11. The United States On International Disputes.

The United States made a great contribution toward development of arbitration, by providing for a peaceful settlement of boundary disputes with Great Britain, in the Jay Treaty.

The Government of the United States has been a pioneer in developing both judicial and arbitral methods of settling international disputes, but for technical reasons it has not adhered to the Permanent Court of International Justice.

The United States has bound itself, in the International Conference of twenty-one independent American nations on the twentieth day of February 1928, to submit to arbitration every

dispute of a legal nature, excepting, therefrom at the request of the others as well as in its own behalf, purely domestic questions, controversies affecting non-contracting parties, and controversies which in the opinion of the signatories might affect or involve the independence and sovereignty of the contracting parties.

We settle disputes between the States of the American Union in the Supreme Court of the States by due process of law, and we have bound ourselves with the Western World to settle by due process of law, through the arbitral form, all disputes of a legal nature which have arisen or which may arise between these twenty-one free, sovereign and independent nations.

XIII. THE WORLD COURT OF INTERNATIONAL JUSTICE.

1. Creation Of Permanent World Court Of International Justice.

One of the earliest and most important tasks of the League was the creation of the Permanent Court of International Justice. The work of the first and second Peace Conferences at The Hague had developed machinery for arbitration, but had failed to create a permanent international court of justice owing to divergencies of opinion as to the method of nominating and electing the judges. This difficulty was overcome. The Assembly and the Council ballot separately for the election of judges, and any candidate with an absolute majority in each body is declared elected. Provisions are made for avoiding deadlock, and in the last resort the Court may be completed by co-option on the part of those already elected.

2. American Condition Of Adherence.

In January 1926 the United States Senate passed a resolution consenting to the adherence on the part of the Government of the United States to the Protocol of Signature of the Statute of the Permanent Court on the condition that the Signatory Powers accepted certain conditions, reservations and understandings contained in the Senate resolution. The Council of the League decided to propose to the Signatories and the United States that delegations should be sent to a meeting in Geneva on September 1, 1926, for the purpose of discussing these reservations. The Government of the United States was unable to accept this invitation. The Conference met and accepted all reservations with the exception of the one which required that, "the Court should not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest". (1)

The other reservations are as follows: 1. "That such adherence shall not be taken to involve any legal relations on the part of the United States to the League of Nations, or the assumption of any obligations by the United States under the Treaty of Versailles. 2. That the United States shall be permitted to participate, through representatives designated for the purpose and upon an equality with the other States, members, respectively, of the Council and Assembly of the League of nations, in any and all proceedings of either the Council or the Assembly for the election of Judges or Deputy Judges of the Permanent Court of

(1) The World Court (By Hudson) Page 141.

International Justice, or for the filling of vacancies. 3. That the United States will pay a fair share of the expenses of the Court, as determined and appropriated from time to time by the Congress of the United States. 4. That the United States may at any time withdraw its adherence to the said protocol, and that the statute for the Permanent Court of International Justice adjoined to the protocol shall not be amended without the consent of the United States. 5. That the Court shall not render any advisory opinion, except publicly after due notice to all States adhering to the Court and to all interested States, and after public hearing or opportunity for hearing given to any State concerned;" The last part of the fifth reservation previously quoted was the only part of the five reservations that was not acceptable to the Council or the League." (1)

The United States also sets forth two declarations of rights in relation to international affairs and the World Court of International Justice.

3. Two Declarations Of The United States.

The first declaration defines our constitutional position which deprives the President of power to submit a case to the World Court without the advice and consent of the Senate. The second declaration of policy reiterates America's intention to refrain from any interference in international affairs of other countries, and to continue to pursue the policy known as The Monroe Doctrine.

(1) The World Court (By Hudson) Pages 140--141

4. Permanent Court Of Arbitration, And, The World Court of International Justice.

When in 1899 the Hague Convention for the Pacific Settlement of International Disputes was drafted and the so-called Permanent Court of Arbitration was set up, the United States became a member and has contributed to the work of that Court four fairly important cases--the Pious Fund case against Mexico; the Orinoco Steamship Co. case against Venezuela; the Fisheries Arbitration with Great Britain; and the ship requisitioning dispute with Norway. The establishment of the World Court of International Justice does not in any way nullify the Permanent Court of Arbitration, which has for its object the settlement by arbitration of differences between States by judges of their own choice, and on the basis of respect for law; while the World Court of International Justice has for its object the judicial settlement of differences by judges, not necessarily chosen by parties in the controversy, by an application of principles of international law.(1) In the settlement of disputes by arbitration, the arbitrators generally act as negotiators affecting settlements of questions brought before them in accordance with traditions and usages and subject to all the considerations and influences which affect diplomatic agents. In the settlement of disputes by the judicial method, the judges decide questions of fact and law upon the record before them under a sense of judicial responsibility. (2) In this type of a decision the principles of law are applied while in arbitration although the arbitrators have respect for law they

(1) The Status Of The International Court of Justice, Page 24
(2) The Status Of The International Court of Justice, Page 29

take into consideration political expediency as well as international law.

The method devised for the election of judges for the World Court of International Justice was taken from the plan set forth by Elihu Root.

5. Elihu Root On Election of Judges.

Elihu Root, former Secretary of State was one of the Advisory Committee of Jurists who formulated and submitted an organic statute for the Constitution of the World Court of International Justice. While on this Advisory Committee of Jurists, Elihu Root advanced the idea for the election of judges which was accepted. It provided for the election of judges by an absolute majority in both the Council and the Assembly of the League of Nations from a list of persons nominated by the national groups in the Court of Arbitration and that in case of a deadlock the judges of the Court may elect additional members. Under the first provision, the League of Nations acts as the machinery for the election of judges to the World Court of International Justice.

6. The Stand Of The United States Senate On Compulsory Arbitration.

The Senate repeatedly, from the days of President Cleveland, has refused to sanction an arbitration treaty providing for compulsory arbitration. It has been required that, even under our general arbitration treaties relating to legal disputes, there should be a limitation relating to questions which affect the vital interests, the independence, or the honor of the two con-

tracting States, and the Senate has insisted that a special agreement for each particular arbitration should be submitted for its assent.

7. John Bassett Moore, A Judge In The World Court.

Why was John Bassett Moore a judge in the World Court of International Justice when the United States is not a member of the League of Nations? The answer is, first that the judges of the Court are not chosen as official representatives of nations, but on their merits as jurists and public men, though with due regard to getting a court which in its aggregate will include men familiar with all the great systems of law in the world. It was natural, therefore, that representation should be accorded to the American Bar. In other words, Judge John Bassett Moore does not sit to represent the United States, but as an exponent of the system of justice which prevails in the United States. He has been succeeded, under the same conditions, by Charles Evans Hughes.

8. World Court Duties.

The World Court has the following duties prescribed for it;--To hear and pass upon any dispute of an international character which parties thereto agree to submit to it, and to give advice and opinion on any subject submitted to it. It also shall deal with the recodification of international law to meet the ever changing conditions of the affairs of the world.

9. Selection of Judges.

The World Court is made up of eleven judges. They are nominated by the Permanent Court of Arbitration and elected by a majority vote of the Council and the Assembly of League. No more than one judge from any country may be chosen to represent any one State. The judges are independent of the League, although the organization of the League of Nations is used as a convenient method of election.

10. Sessions Of Court.

The Court meets annually in regular sessions at The Hague or on call from the President of the League as occasion may demand.

11. Its Decisions.

The decisions of the World Court lack provisions for enforcement. On this ground it is only as strong as its weakest link. It therefore depends on moral force of public opinion and the good faith of States, belonging to the family of nations, for the enforcement of its decisions.

12. United States And The World Court.

The United States is willing to join the World Court if it can do so with the reservations set down by the United States Senate.

13. Consideration Of Reservations.

There was a conference of States signatory to the Protocol for consideration of American reservations, from September 1-23, 1926.

14. Resolutions By Senator Gillette.

On February 6, 1928, Senator Frederick H. Gillette presented a resolution to the United States Senate which provided for exchange of views on adjustment of differences that caused the Senate to refuse to ratify the adherence of the United States as a member of the World Court.

Some of the nations represented in the World Court are so desirous of having the United States as a member thereof that they are willing to revise the status of the World Court so as to overcome the conditions set forth in the reservations by the United States.

15. Revising Status Of World Court.

Elihu Root was asked, to represent the United States in an unofficial capacity, to assist, in conjunction with a committee of experts, in considering the revision of the status of the World Court. His arrival three days before the opening of the session of the League's Council, at Geneva, in March 1929, provided ample opportunity for a discussion on the question of the United States' adherence to the World Court with high officials of the powers, including Sir Austen Chamberlain, Foreign Minister Briand, Foreign Minister Streseman and August Zaleski, all of whom will attend the Council sessions.

It was learned that several jurists were beginning to advocate abandonment of the Council's policy of asking the court to deliver advisory opinions, taking the position that such opinions were liable to complicate and make more difficult actual

settlement of disputes by the Court. Should the Council drop the privilege of asking advisory opinions it was felt there would be no further difficulty in accepting the American reservation and the United States could join the Court immediately. (1)

While Elihu Root was at Geneva, President Hoover delivered his inaugural address which dealt with the subjects of world peace, the World Court of International Justice and the reservations placed upon adherence to it, and Our position in relation to the League of Nations.

16. President Hoover On World Peace.

World Peace. "The United States fully accepts the profound truth that our own progress, prosperity and peace are interlocked with the progress, prosperity and peace of all humanity. The whole world is at peace. The dangers to a continuation of this peace today are largely the fear and suspicion which still haunt the world. No suspicion or fear can be rightly directed toward our country."

"It will do that not by mere declaration, but by taking a practical part in supporting all useful international undertakings. We not only desire peace with the world, but to see peace maintained throughout the world. We wish to advance the reign of justice and reason toward the extinction of force."

"The recent treaty for the renunciation of war as an instrument of national policy sets an advanced standard in our conception of the relations of nations. Its acceptance should

(1) Lowell Sun, Feb. 26, 1929.

pave the way to greater limitation of armament, the offer of which we sincerely extend to the world. But its full realization also implies a greater and greater perfection in the instrumentalities for pacific settlement of controversies between nations."

"In the creation and use of these instrumentalities we should support every sound method of conciliation, arbitration and judicial settlement. American statesmen were among the first to propose, and they have constantly urged upon the world, the establishment of a tribunal for the settlement of controversies of a justiciable character. The Permanent Court of International Justice in its major purpose is thus peculiarly identified with American ideals and with American statesmanship. No more potent instrumentality for this purpose has ever been conceived and no other is practicable of establishment."

"The reservations placed upon our adherence should not be misinterpreted. The United States seeks by these reservations no special privilege or advantage, but only to clarify our relation to advisory opinions and other matters which are subsidiary to the major purpose of the court. The way should, and I believe will, be found by which we may take our proper place in a movement so fundamental to the progress of peace."

"Our people have determined that we should make no political engagements such as membership in the League of Nations, which may commit us in advance as a nation to become involved in the settlements of controversies between other countries. They adhere to the belief that the independence of America from

such obligations increases its ability and availability for service in all fields of human progress."

"Peace can be contributed to by respect for our ability in defence. Peace can be promoted by the limitation of arms and by the creation of the instrumentalities for peaceful settlement of controversies. But it will become a reality only through self-restraint and active effort in friendliness and helpfulness. I covet for this administration a record of having further contributed to advance the cause of peace." (1)

The League of Nations did not meet at Geneva to consider the revision of the status of the World Court until a few days after President Hoover had been sworn in as President of the United States. Elihu Root therefore did not present his formula at Geneva until a few days after the President had expressed his own opinion on the World Court.

17. Root Formula Paves Way To Court For United States.

The text of the formula prepared by Elihu Root as a method for bringing about adhesion of the United States to the World Court of International Justice was discussed by Statesmen, gathered for the Council meeting of the League of Nations. They agreed that it formed a good basis for further consideration of the reservations made by the United States Senate and which hitherto have not been accepted by other nations. It provided for a redraft of Article IV of World Tribunal so that the World Court may not render advisory opinions touching American interests.

(1) Lowell Sun, Mar. 4, 1929.

The formula is entitled, a suggested redraft of Article IV of the protocol of 1926, drafted by a conference of signatories to the international court.

That conference rejected the fifth American reservation, declining to give the United States an unrestricted veto privilege on advisory opinions by the court, when the American republic found itself especially interested in the question propounded. The protocol instead gave an American objection the same force and effect as would attach to a vote of a League member in either assembly or the council of the League, The idea behind this was that the signatories to the court did not know whether opinions should be requested from the tribunal by a majority or by a unanimous vote of the League council.

Article IV also provided that the manner in which American consent would be given to an advisory opinion, should be arranged by negotiations between the United States government and the council of the League. The text of the Root formula follows:

Opinions Must Have Consent.

"The court, shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is not a party, but in which it claims an interest, or touching any question other than a dispute, in which the United States claims an interest."

"The manner in which it shall be made known whether the United States claims an interest and gives or withholds its consent shall be as follows:"

"Whenever in contemplation of a request for an advisory opinion it seems to them desirable, the council or the assembly

may invite an exchange of views with the United States and such exchange of views shall proceed with all convenient speed."

"Whenever a request for an advisory opinion comes to the court, the registrar shall notify the United States thereof, among other states mentioned in the new existing article 73 of the rules of the court, stating that a reasonable time limit would be fixed by the president, within which a written statement by the United States concerning the request will be received. (1)

18. Jurists Accept Root Formula.

The Root formula was tacitly accepted by all jurists as the basis for a new protocol for adherence by the United States to the World Court of Justice. During the general discussion of the first day's session there was evident a feeling of necessity for reaching a permanent solution of the problem which has engaged international attention for more than three years.

Old Difficulty Rises. The United States wants to join the court. Other nations want her there. It is now only a question of ways and means. Hardly had the discussion been launched, however, when there rose to the surface the old difficulty of successfully arranging for American membership in a court which has certain affiliations with the League of Nations, of which the United States is not a member.

The United States itself raised this matter, in the recent Kellogg note and virtually asked that her rights be safeguarded in event that the league assembly or council decided to modify the

(1) Lowell Courier-Citizen, March 7, 1929.

powers of the court or to ask new things of it. This was deemed a difficult situation to meet in principle but in practice most jurists seemed convinced that the difficulty was covered by the Root formula.

Has Right to Resign. Some of them swiftly pointed to the fact that Mr. Elihu Root's proposal did not concern itself with that unsettled internal question of whether the league council should have a majority or unanimous vote of its members in asking the court for an advisory opinion. Sir Cecil Hurst of Great Britain made the point that when all is said and done, the United States will have the right to resign from the court if it does not like any new attitude of the league toward the court.

Professor W. J. M. van Eysinga of the Netherlands emphasized that in its relation to the United States the juridical aspect of the court at The Hague and the political aspect at Geneva should be distinctly differentiated.

Jurists to Draft Protocol. A second proposal introduced by Sir Cecil Hurst, provided that if the league covenant or rules of the court are modified in a manner which might prejudice the protection of the United States against demands for advisory opinion in cases in which it has an interest, the United States would have the right to resign.

The jurists are expected to draft the new protocol for American adherence, but it was expected that this would have to be submitted to an international conference of the court members. (1)

(1) Lowell Courier-Citizen, March 12, 1929.

In bringing this thesis to a close I believe I am justified in using the following quotation.

19. Peace On Earth To Men Of Good Will.

"Glory To God On High:

And

On Earth Peace To Men

Of Good Will."

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